

SAMPLE PETITION FOR SEALING ARREST RECORD

UNDER I.C. 35-38-9-1

This Sample Petition was created jointly by the Indiana Supreme Court Division of State Court Administration and the Indiana Judicial Center and is intended to be an example of the information that should be included in a Petition filed under I.C. 35-38-9-1. This form may be subject to change.

The procedure to seal or expunge records under I.C. 35-38-9 is extremely complex, has not yet been fully litigated and contains severe consequences if mistakes are made. The Indiana Supreme Court Division of State Court Administration and the Indiana Judicial Center strongly recommend that you seek legal advice from an attorney before filing a petition on your own especially if you are seeking to seal or expunge more than one record.

INSTRUCTIONS FOR CLERKS AND COURTS

1. This form should only be used to seal arrest records if the arrest did not result in a conviction or juvenile adjudication or the arrest resulted in a conviction or juvenile adjudication and the conviction or adjudication was vacated on appeal.
2. Petitioner should complete the petition in its entirety.
3. The petitioner needs to choose between alternatives (indicated by an **[OR]**) in the introductory statement and paragraphs 2, 7 and 8. The petitioner should choose the alternative that best describes his/her situation and delete or redact the other choices. Do not include more than one paragraph option for any numbered paragraph in the Verified Petition.
4. Paragraph 10 is optional. It is the Petitioner's decision whether to share additional information with the Court.
5. **Waiting Period:**
At least one year after date of arrest if the Petitioner was not convicted or adjudicated a delinquent child OR at least one year after date of an appellate opinion vacating the conviction or delinquency adjudication becomes final.
6. **Case Type:**
The petition should be filed in the existing criminal or juvenile case, if the arrest resulted in a case being filed in a court. If the arrest did not result in a case being filed and there is no existing case, then the Clerk should assign a new MC – miscellaneous criminal case number to the Petition.
7. **Filing Fees:**
There are no filing fees for a petition filed under I.C. 35-38-9-1.
8. **Where Petition should be filed:**
By statute, the petition to seal arrest records should be filed (1) in the sentencing court, if the person was sentenced or the juvenile was adjudicated to be a delinquent; (2) in the court where the person was charged or a delinquency petition was filed against a child if the defendant was

acquitted or the child was found not to be a delinquent, or (3) in any court with criminal jurisdiction if the arrest did not result in the filing of a criminal or juvenile case.

9. Notice to Prosecutor:
The statute does not require notice to the prosecutor.
10. Burden of Proof Required by Petitioner:
The petitioner must prove his/her petition by clear and convincing evidence.
11. Hearing:
The court does not have to hear the petition and may rule on it without a hearing.
12. Court Discretion with finding:
The Court has no discretion if the statute is met. If the court finds that the petitioner has met each of the requirements set out in the statute, the court is required to order the arrest records described in the petition sealed so that only a criminal justice agency may access the record without a court order.
13. Result if Petition is Granted:
The described arrest records will be sealed so that only a criminal justice agency may access the record. If those arrest records have become part of a court record, “sealing” means that they will be excluded from public access as provided in Administrative Rule 9(G). Future access to such sealed court records will be available to law enforcement agencies (as described in the statute) but access by other parties shall be governed by Administrative Rule 9(I), which requires for a petition, notice and hearing. **The records will not be on public access.**

STATE OF INDIANA)

IN THE _____ COURT

COUNTY OF _____

) SS:

CAUSE NO. _____

STATE OF INDIANA,

v.

_____,

Petitioner.

)
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Petition should be filed in existing criminal case. If there is no existing criminal case, Clerk should open a new MC – Miscellaneous Criminal case. No filing fees are required.

VERIFIED PETITION FOR SEALING OF ARREST RECORDS

I.C. 35-38-9-1

Petitioner, _____, by counsel/pro se, respectfully moves the Court to seal Petitioner's arrest record pursuant to I.C. 35-38-9-1. The Petitioner was arrested on the ____ day of _____, _____. Charges were filed under cause number _____, and the case was captioned either: In Re the Matter of _____ **OR** State of Indiana vs. _____.

[OR]

There is no relevant criminal case.

Petitioner affirms under the penalties of perjury:

1. Petitioner's full name is _____.
2. Petitioner has no other legal names or aliases by which Petitioner is or has been known.

[OR]

2. Petitioner has other legal names and aliases by which Petitioner is or has been known and they include: _____.
3. Petitioner's date of birth is _____.
4. Petitioner's addresses from the date of the arrest to the date of this Petition are/ have been (list most current address first):
_____;

_____;
_____.

5. There are no current criminal charges pending against Petitioner.
6. Petitioner was arrested in _____ (Name of County and State) on _____ (date of arrest) for the offense of _____.
7. No charges were filed as a result of this arrest.

[OR]

7. This arrest resulted in charges being filed that were ultimately dismissed.

[OR]

7. This arrest resulted in a case being filed however the case did not result in a conviction or there was no finding of adjudication as a delinquent child on all counts.

[OR]

7. Petitioner was convicted or there was a finding of adjudication as a delinquent child but on _____ this conviction or adjudication was vacated on appeal.

8. At least one (1) year has passed since the date of arrest.

[OR]

8. At least one (1) year has passed since the date the conviction or finding of adjudication as a delinquent child was vacated on appeal.

9. As a result of the arrest, Petitioner received services or treatment from the following providers under court order:

Name: _____

Address: _____

Name: _____

Address: _____

Name: _____

Address: _____

10. **(Optional)** The Petitioner wishes to provide the following information to assist the Court:

WHEREFORE, Petitioner respectfully requests this Court to seal the arrest records contained in:

- (1) the Court's files;
- (2) the files of the Indiana Department of Correction;
- (3) the files of the Indiana Bureau of Motor Vehicles; and
- (4) the files of any other person who provided treatment or services to Petitioner under a court order;
- (5) the central repository for criminal history information maintained by the Indiana State Police

that relate to the Petitioner's arrest, and all other relief that is just and proper.

Signature of Petitioner

Printed Name of Petitioner/Counsel

I affirm under the penalties of perjury that the foregoing representations are true.

Signed: _____

Printed: _____
Petitioner